UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 March 2008*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed on 3/27/2008 have been fully considered but they are

not persuasive.

On page 5, 3rd paragraph of applicant's arguments, applicant argues Rowe does

not teach a system where content developers can author and create interactive

television (iTV) applications, in which there is a separation of application behavior from

content and business roles, according to an authoring specification that describes a

framework for the iTV applications. The examiner disagrees.

Regarding limitation "content developers can author and create interactive

television (iTV) applications", Rowe teaches a client server (NOC) adapted to allow

content developers to author and create iTV applications. See Rowe col. 4 ll. 8-16,

where the NOC "controls security, files access, **creation**, management, and distribution

of object-oriented television programming". Further, col. 4 ll. 39-44 state "**The**

television programming contribution, production, and distribution system

functionality provides any processing required to create, manage to distribute

television programming. **One or more contributors create television programming**

elements and/or objects by accessing the legacy system programming functionality

using an IP-based interface **provided by the NOC**." Therefore, interactive television

programming is authored and created by contributors through the NOC.   Also, see col.

8 ll. 38-40. Col. 8 ll. 64-col. 9 ll. 2 defines the products made thru the NOC by the

contributors as e.g. "interactive and enhanced TV products, games, personal video recorders...", which qualify the products as iTV applications.

Regarding limitation "in which there is a separation of application behavior from content and business roles", Rowe further teaches a separation of application behavior from content and business rules. Rowe discloses content and business rules, such as underage users being denied access to adult programming. This is a business rule in the sense that delivery of a product to a customer is restricted based on the customer's age. It is also an example of a content rule, in that adult material may not be contained in products delivered to underage users. The rule has nothing to do with the application behavior.

Regarding limitation "according to an authoring specification that describes a framework for the iTV applications", Rowe's iTV application creation and deployment is based on an authoring specification (classifications and playlists) that describes a framework for the applications. See figures 5B and 6 which show the framework for classifications, objects, and events which combine to make interactive television programming services.

Applicant also argues in page 5 paragraph 3 that Rowe does not teach an operator deployed application management system configured to optimize the iTV applications. The examiner disagrees. Rowe's network operations center (NOC) allows operators (contributors) to define and create the playlists which are designed to make application development and deployment more efficient (i.e. optimizing applications).

In regards to the double patenting objection, pending application 10/390,064

(referred to as application '064) does not reflect any amendments for the claims cited in

the examiner's previous action. Further, the amendment to the instant application is not

sufficient to overcome the double patenting rejection, as it does not substantially change

the claim limitations nor does it add any limitations that are patentably distinct from the

previously cited claims in application '064. Therefore the double patenting rejection

stands.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent
> granted on an application for patent by another filed in the United States before the invention by the
> applicant for patent, except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
> only if the international application designated the United States and was published under Article 21(2)
> of such treaty in the English language.

3.   Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Rowe

(US 7,207,057 B1).

Regarding claim 1, Rowe teaches a system, comprising:

a server component (column 4 lines 3-16, column 5 lines 35-57, column 8 lines

38-56) adapted to allow content developers to create interactive television (iTV)

applications (products by "contributors" such as those described in column 7

lines 15-21 and 42-47, column 8 lines 3-17, 22-27, column 8 line 64-column 9

line 2), in which there is a separation of application behavior from content and

business rules (one disclosed business rule, for example, is access control which

is built tied to user and product classifications rather than application behavior,

column 12 lines 9-38), according to an authoring specification (playlists and

classifications, as defined in column 12 line 52-column 13 line 18) that describes

a framework for the iTV applications (column 4 lines 8-16, column 8 lines 38-56,

column 9 lines 27-37);

a transport component including an operator-deployed application management

system (playlists) configured to optimize the iTV applications from the server

component and to deliver the iTV applications to one or more client devices

(column 4 lines 8-21, column 8 lines 57-63, column 10 lines 42-54); and

a client component resident on at least one of the client devices and adapted to

render the iTV applications through a television so as to permit user interaction

with the iTV applications (figure 3c element 358:set-top box, column 10 lines 54-

57, column 8 lines 7-17).

Regarding claim 2, when read in light of claim 1, Rowe further teaches the

iTV applications comprise one or more of ...(f) personal video recorder

applications, ..., (h) enhanced television services applications,..., (l) games, ...

(column 8 line 64-column 9 line 2).

Regarding claim 3, when read in light of claim 1, Rowe further teaches the

client component comprises a software module resident in a memory of the at

least one of the client devices, the software module being one of: a Java applet,

a C applet, a C++ applet, or a C# applet (column 5 lines 58-62, column 6 lines 4-

7, column 8 lines 7-17).

Regarding claim 4, when read in light of claim 3, Rowe further teaches the

client component is adapted to download the iTV applications delivered by the

transport component in response to user input (column 9 lines 14-18 describes

applications being delivered in a customized form based on a user profile which

includes viewing habits).

Regarding claim 5, when read in light of claim 1, Rowe further teaches the

authoring specification comprises an extensible markup language (XML)

authoring specification (column 1 lines 15-24 discloses the use of XML with, or

instead of, Java, column 3 lines 34-38).

Regarding claim 6, when read in light of claim 5, Rowe further teaches the

presentation of content is accommodated through one or more templates defined

within the XML authoring specification (column 1 lines 15-24 discloses the use of

XML with, or instead of, Java, column 3 lines 34-38, column 9 lines 27-37).

Regarding claim 7, when read in light of claim 1, Rowe further teaches the

server component is configured to apply one or more business rules in preparing

the iTV applications for delivery to the transport component (product delivery

rules column 9 lines 14-17, access control rules column 12 lines 9-25 and lines

37-38).

Regarding claim 8, when read in light of claim 7, Rowe further teaches the

framework for iTV applications accommodates advertising, promotions, content

placement packages and/or programming campaign definitions, so as to permit a

selection of a specific advertisement, promotion or content at a time of

preparation of the iTV content by the server component, and/or a time of

execution of the iTV applications by the client component, such selection being

made according to one or more business rules (targeted advertising, column 8

lines 22-27).

Regarding claim 9, when read in light of claim 8, limitation "wherein the

one or more business rules comprise rules for placing and/or automating product

offerings, promotions, advertising campaigns, VOD, broadcast-on-demand,

transactional opportunities, and/or other types of content across disparate

television services" is further met by Rowe's use of targeted advertising, as it

would require rules and guideline about when and where to place ads based on the programs a user views.

Regarding claim 10, when read in light of claim 9, Rowe further teaches the iTV applications are tagged in a manner such that the iTV applications present all placement opportunities across all applications as a set of programmable opportunities (column 8 lines 22-26 describe an application that places advertisements based on what show the user is watching, where such shows could potentially be interactive applications such as videos on demand).

Regarding claim 11, when read in light of claim 10, Rowe further teaches a programmable opportunity is any location or set of locations within the iTV applications where content may be placed, said content including advertisements, promotions, data including text images and/or video, or another application (column 8 lines 22-26 describe an application that places advertisements within a show the user is watching, where such shows could potentially be interactive applications such as videos on demand).

Regarding claim 12, when read in light of claim 10, Rowe further teaches where the server component presents a view of the programmable opportunities for automated control of individual programming opportunities or groups of

programming opportunities (column 13 lines 19-68 describe how the invention

can be used for collaborative purposes, where television content can be stored,

shared, and edited by anyone in a particular access group. In this way, a view of

the entire content can be shared for viewing or editing by a number of people).

Regarding claim 13, when read in light of claim 9, Rowe further teaches

the rules for placing and/or automating product offerings accommodate multiple

selection criteria chosen from the list including: location, current channel, current

channel family, current channel category, time of day, offering category, current

program, current program genre, current iTV application, current content type,

and subscriber profile (column 8 lines 22-26).

Regarding claim 14, when read in light of claim 9, Rowe further teaches

the one or more business rules accommodate subscriber- specific rules

according to a subscriber profile associated with a particular one of the client

devices upon which the client component is resident (column 12 lines 35-38).

Regarding claim 15, when read in light of claim 14, Rowe further teaches

the iTV applications are configured to respond in a subscriber-specific manner to

user interactions with the iTV applications (column 8 lines 12-17).

Regarding claim 16, when read in light of claim 8, Rowe further teaches

the business rules are selected at one of the following instances: dynamically at

the time of execution of the iTV applications, or at the time of application creation

(column 8 lines 22-27, in the case of targeted advertising, rules dictating which

ads belong with which types of content must be decided either when the E-

commerce application is created or while it is executing).

Regarding claim 17, when read in light of claim 1, Rowe further teaches

the framework for iTV application (product, column 11 lines 60-63) definition

accommodates business rules, so as to permit a selection and use of a specific

business rule at a time of execution of the iTV applications (column 12 lines 9-11,

column 12 lines 35-38).

Regarding claim 18, when read in light of claim 1, Rowe further teaches

the framework for iTV application definition accommodates an application profile

definition (roll types and playlists as defined in column 9 lines 27-46 and column

12 line 52-column 13 line 18), defined by a set of capabilities that correspond to a

set of actions in the authoring specification, which provides a common model for

provisioning, managing, deploying, advertising, commerce, layout, animation,

events and navigation, dynamic data insertion, and optimization of the iTV

applications across different iTV operating environments (column 12 line 52-

column 14 line 39 describe how a playlist can be used for assigning tasks,

creating, editing, and distributing programs).

Double Patenting

4.   The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees.   A nonstatutory
obviousness-type double patenting rejection is appropriate where the conflicting claims
are not identical, but at least one examined application claim is not patentably distinct
from the reference claim(s) because the examined application claim is either anticipated
by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140
F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29
USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.
1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422
F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163
USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d)
may be used to overcome an actual or provisional rejection based on a nonstatutory
double patenting ground provided the conflicting application or patent either is shown to
be commonly owned with this application, or claims an invention made as a result of
activities undertaken within the scope of a joint research agreement.
        Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

5.   Claims 1-18 are provisionally rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over claims 1-4, 8-18, and

25-27 of copending Application No. 10/390,064 in view of Rowe (US 7,207,057 B1).

        Application claim 1 (10/630815) with the additional limitation "including an

operator-deployed application management system" corresponds to co-pending

application (10/309,064) claim 1.

Rowe discloses a network operations (NOC) center that, amongst other

roles, distributes interactive television programming through the use of playlists

(column 4 lines 8-21). A playlist is an application management system, as

described in column 12 line 52-column 13 line 18. It would have been obvious to

one of ordinary skill in the art at the time the invention was made modify

copending application no. 10/390,064 with the application management system

taught by Rowe for the benefit of giving users of the system greater control of

how and when iTV applications are delivered.

Application claim 2 (10/630815) corresponds to co-pending application

(10/309,064) claim 2.

Application claim 3 (10/630815) corresponds to co-pending application

(10/309,064) claim 3.

Application claim 4 (10/630815) corresponds to co-pending application

(10/309,064) claim 4.

Application claim 5 (10/630815) corresponds to co-pending application

(10/309,064) claim 8.

Application claim 6 (10/630815) corresponds to co-pending application (10/309,064) claim 9.

Application claim 7 (10/630815) corresponds to co-pending application (10/309,064) claim 10.

Application claim 8 (10/630815) corresponds to co-pending application (10/309,064) claim 11.

Application claim 9 (10/630815) corresponds to co-pending application (10/309,064) claim 12.

Application claim 10 (10/630815) corresponds to co-pending application (10/309,064) claim 13.

Application claim 11 (10/630815) corresponds to co-pending application (10/309,064) claim 14.

Application claim 12 (10/630815) corresponds to co-pending application (10/309,064) claim 15.

Application claim 13 (10/630815) corresponds to co-pending application
(10/309,064) claim 16.

Application claim 14 (10/630815) corresponds to co-pending application
(10/309,064) claim 17.

Application claim 15 (10/630815) corresponds to co-pending application
(10/309,064) claim 18.

Application claim 16 (10/630815) corresponds to co-pending application
(10/309,064) claim 25.

Application claim 17 (10/630815) corresponds to co-pending application
(10/309,064) claim 26.

Application claim 18 (10/630815) corresponds to co-pending application
(10/309,064) claim 27.

This is a <u>provisional</u> obviousness-type double patenting rejection. If the applicant

agrees with provisional obvious-type double patenting between the application

#10/630815 and copending application #10/309,064, the examiner requests applicant to

provide a terminal disclaimer for each one of the above provisional obvious-type double

patenting rejected claims.

Conclusion

2.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to JASMINE STOKELY-COLLINS whose telephone

number is (571) 270-3459. The examiner can normally be reached on M-Th 9:30-5:00

EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Andrew Koenig can be reached on (571) 272-7296. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jasmine Stokely-Collins/
Examiner, Art Unit 2623

/Andrew Y Koenig/
Supervisory Patent Examiner, Art Unit 2623